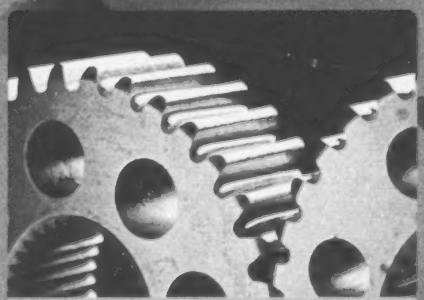
CANADIAN HUMAN RIGHTS COMMISSION

COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

2012 Annual Report

ORDERS OF THE DAY
INTRODUCTION
SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE
LE HARCÈLEMENT SEXUEL DANS LES MILIEUX DE TRAVAIL FÉDÉRAUX



Issues

Outcomes

Engagement

Canada

Contact the Canadian Human Rights Commission

For more information about human rights, contact:

National Office
344 Slater Street, 8th Floor,
Ottawa, Ontario K1A 1E1
Telephone: 613-995-1151
Toll Free: 1-888-214-1090
TTY: 1-888-643-3304
Fax: 613-996-9661

National Aboriginal Initiative
175 Hargrave Street, Room 750
Winnipeg, Manitoba R3C 3R8
Telephone: (204) 983-2189
Toll Free: 1-866-772-4880
TTY: 1-866-772-4840 Fax: (204) 983-6132

For media inquiries, contact Media Relations at 613-943-9118

Note: All complaint-related inquiries will be transferred to the Commission's national office.

© Minister of Public Works and Government Services 2013
Cat. No. HR1-2012E-PDF
ISSN 1494-5738

This publication is available on the Commission's website at: **www.chrc-ccdp.gc.ca**

TABLE OF CONTENTS

OUTCOMES

Acting Chief Commissioner's Message 1
Our Work 3
Statistics 5
The Commission's complaint screening process 5
Complaints 7
Decisions in 2012 13
A systemic discrimination case about disability 13
A landmark settlement for equal pay for equal work 14
Hate speech provisions to be removed from *Canadian Human Rights Act* 15

ISSUES

Aboriginal Issues 16
First Nations turn to Canadian Human Rights Act as agent of change 16
In the news 19
Disability Issues 23
Changing how we see mental illness 23
Mental health and Canada's prisons 24
Gaps in equality of opportunity for people with disabilities 26
Gender Issues
No to harassment: Organizations must be proactive 27
Breaking down barriers to gender equality 28

ENGAGEMENT

Corporate responsibility for human rights 30
Release of Human Rights Maturity Model 30
Chairing the ICC Working Group on Business and Human Rights 31
Workplace Accommodation 32
Speaking the same language 32
Mental illness and human rights in the workplace 32
Employment Equity 33
Reaching more employers 33
Promoting the business case for diversity 34

Acting Chief Commissioner's Message

When Parliament created the *Canadian Human Rights Act* 35 years ago, it had a clear purpose: to promote equal opportunity. Parliamentarians shared a vision that carried the promise of enabling all people in Canada to participate fully in society, free from discrimination.

Across Canada, people began using the Act to fight discrimination. The complaints they brought to the Commission helped shape Canadian society. From closed captioning on television, to female soldiers serving on the frontlines, our society is different today not just because of the Act, but because of the determination of individuals to challenge discrimination.

Today, the *Canadian Human Rights Act* continues to be a tool for change. Equality is sometimes still a distant promise for people with mental illness and other disabilities, for victims of sexual harassment, or for people living in First Nations communities. People continue to bring forward complaints of discrimination against organizations under federal jurisdiction, including the Government of Canada.

A major change to our Act took full effect in June 2011. This change guarantees the right of people living on reserves to hold both the federal government and First Nations governments accountable for discrimination in the community, in the workplace, or in the provision of services.

People have noticed. Complaints from members of First Nations communities and Aboriginal groups have exceeded expectations. The sheer volume of complaints received tells us that Aboriginal people are beginning to use the *Canadian Human Rights Act* to improve their daily lives.

This work has brought many new challenges to the Commission, but also a renewed energy to meet them. Parliament has given residents of First Nations communities the same promise of human rights protection as all other people in Canada. Our challenge is, and will continue to be, to deliver on that promise.

A major test of Parliament's intent in amending the Act lies just ahead. An important case dealing with funding of child welfare services on reserves will be heard by the Canadian Human Rights Tribunal in early 2013. It will have broad implications for similar cases involving federal funding for services delivered on reserves.

On another front, our work to help prevent discrimination in organizations under federal jurisdiction received a major boost with the release of the Human Rights Maturity Model, a roadmap for building better, healthier workplaces. This framework is now available for free to all Canadian businesses, and it has earned praise from organizations that are applying it.

We continued to participate actively in national discussions on human rights issues in mainstream media. On Parliament Hill, our opinions and advice have continued to enrich national debate. Around the world, national human rights institutions point to Canada as a leader, and I have been honoured to provide advice to many of them based on the expertise we have accrued over the decades.

I am confident that the dedicated team of professionals at the Commission will continue to deliver on the promise of the *Canadian Human Rights Act*. It is a privilege to lead and be supported by such a gifted group of individuals.

David Langtry
Acting Chief Commissioner

Our Work

Mandate

The Canadian Human Rights Commission promotes the core principle of equal opportunity and works to prevent and remedy discrimination in Canada by:

- promoting the development of human rights cultures;
- understanding human rights through research and policy development;
- protecting human rights through effective case and complaint management; and
- representing the public interest to advance human rights for all Canadians.

Commission members

A full-time Chief Commissioner acts as the Chief Executive Officer and leads the Commission. Three part-time Commissioners support the Chief Commissioner.

The Commission's three part-time Commissioners. From left to right: Roch A. Fournier, Sandi Bell and Peter McCreath.

Operating Budget

The Secretary General guides the daily operations of employees. The Commission's operating budget is $23.1 million (2012-2013 fiscal year).

Top five searches on the Commission's web site in 2012

- Anti-harassment
- Resolving Disputes
- Canadian Human Rights Act
- Guide to screening in employment
- Employment Equity

Working together to be more efficient

For many small and micro agencies in the federal government, the work required in areas such as human resources, finance, technology, information management and security does not always warrant dedicated, full-time resources. However, the need for expertise and timely service is as real as it is for any large government department. Sharing services gives small agencies the ability to meet evolving administrative demands with limited funding.

The Canadian Human Rights Commission is recognized as a leader in providing shared services to some small departments and agencies in the federal government. The Commission currently co-chairs the Small Agencies Administrators Network, which advocates on behalf of small departments and agencies. The network provides opportunities to share information and best practices, and address issues of common concern. It provides a single point of contact between central agencies and small agencies.

Sharing expertise and administrative services with small agencies has helped the Commission find efficiencies in its own operations and optimize resources. By helping smaller agencies the Commission is also helping itself. It is an efficient, prudent and responsible use of public funds.

Statistics

The Commission's complaint screening process

In 2012, the Canadian Human Rights Commission was contacted over 19,000 times about human rights and received 1,561 complaints. Not every complaint resulted in a hearing in front of the Canadian Human Rights Tribunal. Nor did it need to.

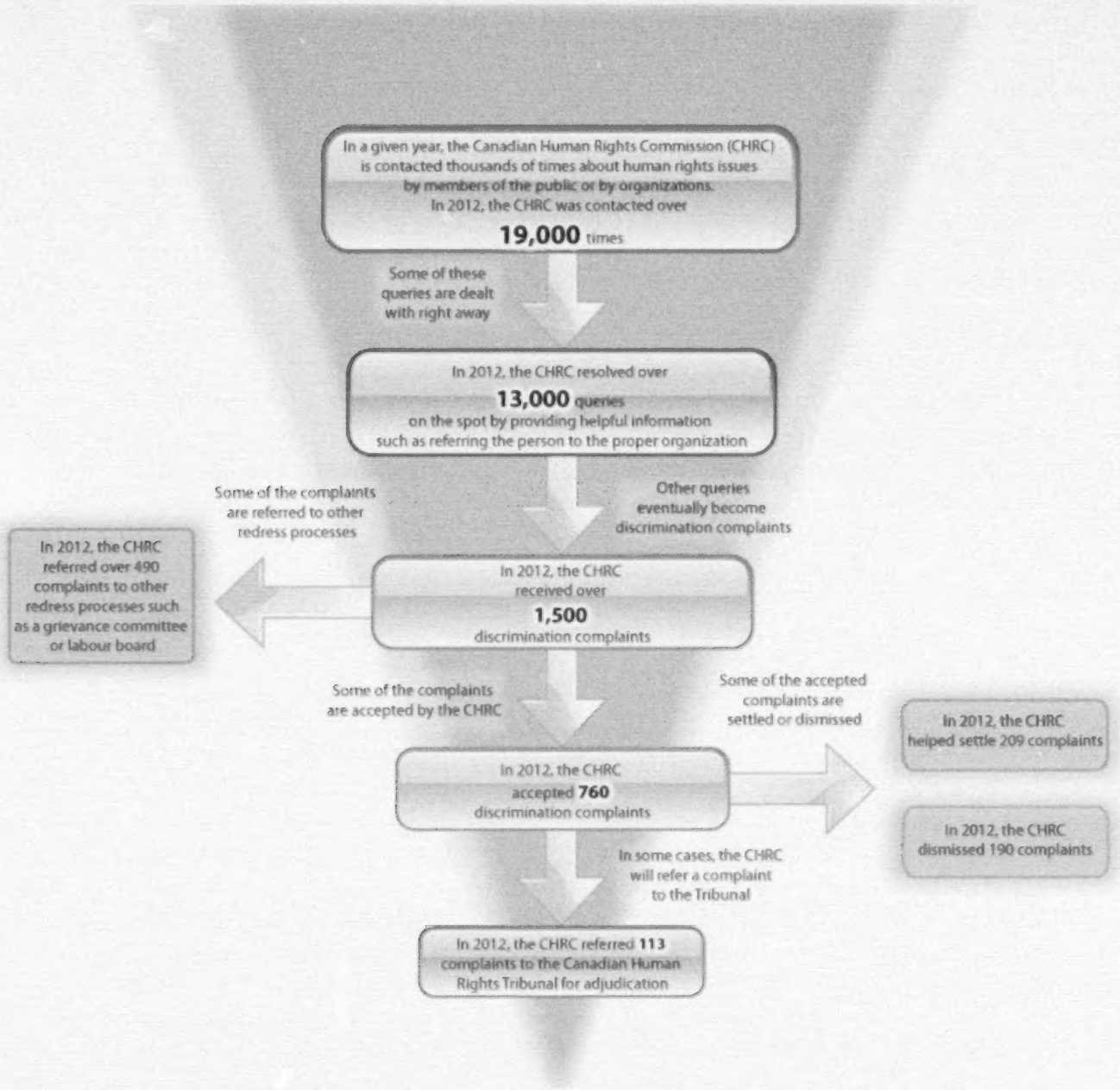
If every complaint were to go to the Tribunal, this could clog the system with matters that do not require a full hearing in a quasi-judicial process. It would delay justice for pressing and urgent cases. This is why the Commission's screening and early resolution work is so important.

When the Commission responds to any one of the thousands of inquiries it receives from the public every year, it is often serving as the first point of contact for people who feel they have been discriminated against. In many cases callers simply need information about human rights or to be directed to a more appropriate authority. The Commission sometimes refers complaints to internal grievance processes, or to other jurisdictions. Some are dismissed.

In some cases the Commission may work with the complainant and the respondent to resolve a dispute informally. This is often a better option than a full hearing before the Tribunal.

However, the Commission will refer a complaint to the Canadian Human Rights Tribunal when it is warranted. Only a fraction of complaints get referred to the Tribunal.

The Commission's complaint screening process


In a given year, the Canadian Human Rights Commission (CHRC) is contacted thousands of times about human rights issues by members of the public or by organizations. In 2012, the CHRC was contacted over
19,000 times
Some of these queries are dealt with right away
In 2012, the CHRC resolved over
13,000 queries
on the spot by providing helpful information such as referring the person to the proper organization
Some of the complaints are referred to other redress processes
Other queries eventually become discrimination complaints
In 2012, the CHRC referred over 490 complaints to other redress processes such as a grievance committee or labour board
In 2012, the CHRC received over
1,500
discrimination complaints
Some of the complaints are accepted by the CHRC
Some of the accepted complaints are settled or dismissed
In 2012, the CHRC helped settle 209 complaints
In 2012, the CHRC accepted 760 discrimination complaints
In 2012, the CHRC dismissed 190 complaints
In some cases, the CHRC will refer a complaint to the Tribunal
In 2012, the CHRC referred 113 complaints to the Canadian Human Rights Tribunal for adjudication

Complaints

By law, the Commission must look at every discrimination complaint that it receives. The Commission can dismiss the complaint or refer it to an alternative dispute resolution mechanism.

When possible, the Commission encourages people to try to solve their disputes informally and at the earliest opportunity.

In the event no agreement is reached, the Commission may conduct an investigation. When warranted, the Commission can refer it to the Canadian Human Rights Tribunal for a hearing.

In 2012, the Commission:

- received 1,561 complaints; [1]
- accepted 760 complaints;[2]
- referred 494 complaints to another redress process;[3]
- settled 209 complaints;
- dismissed 190 complaints; and
- referred 113 complaints to the Canadian Human Rights Tribunal.

[1]A received complaint, also known as a potential complaint, is a contact that falls within the mandate of the Commission, and that may lead to an accepted complaint after analysis and review.

[2]An accepted complaint is a document, in a form acceptable to the Commission, that is filed by an individual or group of individuals having reasonable grounds for believing that a person or organization is engaging or has engaged in a discriminatory practice.

[3]This year, the the number of complaints referred to another redress process includes those that were referred to the Public Service Labour Relations Board or the Public Service Staffing Tribunal before they became accepted complaints. This was not the case in previous annual reports.

Figure 1 - Complaints received by province or territory

	2010		2011		2012	
	#	%	#	%	#	%
Ontario	688	48	889	46	717	46
British Columbia and Yukon	230	16	278	15	225	14
Quebec	159	11	231	12	174	11
Alberta, Northwest Territories and Nunavut	152	11	169	9	166	11
Nova Scotia	43	3	88	5	71	5
Manitoba	70	5	103	5	59	4
Saskatchewan	40	3	66	3	57	4
New Brunswick	36	3	41	2	61	4
Outside of Canada	1	-	4	-	1	-
Newfoundland and Labrador	8	1	38	2	19	1
Prince Edward Island	3	-	7	-	11	1
Total	**1,430**	**100**	**1,914**	**100**	**1,561**	**100**

Figure 2 - Complaints received by types of respondents

	2010		2011		2012	
	#	%	#	%	#	%
Private Sector	566	40	699	37	558	36
Federal government*	621	43	897	47	777	50
Reserves, Bands and Councils	78	5	138	7	138	9
Unions	79	6	71	4	50	3
Individuals	86	6	109	6	38	2
Total	**1,430**	**100**	**1,914**	**100**	**1,561**	**100**

*Includes employers in the core public administration, separate federal government organizations or agencies and Crown corporations

Figure 3 - Complaints received by ground(s) of discrimination* cited

	2010		2011		2012	
	#	%	#	%	#	%
Disability	719	38	891	33	746	36
Age	220	12	259	10	146	7
National or Ethnic Origin	184	10	307	12	217	10
Race	183	10	247	9	182	9
Sex	196	10	408	15	343	17
Family Status	121	6	217	8	165	8
Colour	92	5	143	5	92	4
Religion	76	4	76	3	86	4
Marital Status	47	2	78	3	43	2
Sexual Orientation	42	2	38	1	40	2
A conviction for which a pardon has been granted or a record suspended	3	-	3	-	8	-
Total	**1,883**	**100**	**2,667**	**100**	**2,068**	**100**

*Total number of grounds cited exceeds the total number of received complaints because some complaints dealt with more than one ground.

Figure 4 - Complaints received by types of allegation* cited

	2010		2011		2012	
	#	%	#	%	#	%
Employment-related (sections 7,8,9)	1,554	72	2,070	71	1,658	72
Services-related (sections 5,6)	294	14	435	15	390	17
Harassment – employment (section 14)	194	9	290	10	176	8
Union membership (section 9)	71	3	59	2	48	2
Retaliation (section 14.1)	32	1	36	1	32	1
Harassment – services (section14)	17	1	33	1	7	-
Notices, signs, symbols (section 12)	1	-	-	-	3	-
Hate messages (section 13)	5	-	4	-	-	-
Pay equity (section 11)	1	-	2	-	-	-
Intimidation (section 59)	-	-	-	-	1	-
Total	**2,169**	**100**	**2,929**	**100**	**2,306**	**100**

*Total number of allegations cited exceeds the total number of received complaints because some complaints dealt with more than one allegation.

Figure 5- Complaints accepted by province or territory

	2010		2011		2012	
	#	%	#	%	#	%
Ontario	452	55	437	48	337	44
British Columbia	145	18	147	16	121	16
Quebec	96	12	106	12	110	14
Alberta, Northwest Territories and Nunavut	60	7	87	10	65	9
Nova Scotia	12	1	41	5	39	5
Manitoba	45	5	34	4	33	4
Saskatchewan	-	-	19	2	23	3
New Brunswick	11	1	18	2	13	2
Outside of Canada	1	-	7	1	2	-
Newfoundland and Labrador	3	-	5	1	9	1
Prince Edward Island	1	-	2	-	8	1
Total	**826**	**100**	**903**	**100**	**760**	**100**

Figure 6 - Complaints accepted by types of respondents

	2010		2011		2012	
	#	%	#	%	#	%
Private Sector	370	43	414	46	366	48
Federal government*	317	37	315	35	254	33
Reserves, Bands and Councils	39	5	59	7	61	8
Unions	96	11	59	7	54	7
Individuals	31	4	56	6	25	3
Total	**853**	**100**	**903**	**100**	**760**	**100**

*Includes employers in the core public administration, separate federal government organizations or agencies and Crown corporations.

Figure 7 - Complaints accepted by ground(s) of discrimination* cited

	2010		2011		2012	
	#	%	#	%	#	%
Disability	372	33	404	28	411	33
Age	227	20	200	14	130	11
National or Ethnic Origin	122	11	175	12	139	11
Race	115	10	161	11	128	10
Sex	105	9	160	11	128	10
Family Status	60	5	105	7	106	9
Colour	59	5	89	6	74	6
Religion	38	3	53	4	50	4
Marital Status	22	2	53	4	33	3
Sexual Orientation	17	1	22	2	27	2
A conviction for which a pardon has been granted or a record suspended	3	-	2	-	4	-
Total	**1,140**	**100**	**1,424**	**100**	**1,230**	**100**

*Total number of grounds cited exceeds the total number of accepted complaints because some complaints dealt with more than one ground.

Figure 8 - Complaints accepted by types of allegation* cited

	2010		2011		2012	
	#	%	#	%	#	%
Employment-related (sections 7,8,9)	1,080	73	1,055	70	926	69
Services-related (sections 5,6)	169	11	247	16	207	15
Harassment – employment (section 14)	114	8	175	12	124	9
Union membership (section 9)	80	5	-	-	52	4
Retaliation (section 14.1)	20	1	22	1	28	2
Harassment – services (section14)	11	-	15	1	6	-
Notices, signs, symbols (section 12)	1	-	-	-	2	-
Hate messages (section 13)	-	-	1	-	1	-
Pay equity (section 11)	-	-	-	-	-	-
Intimidation (section 59)	-	-	-	-	-	-
Total	**1,475**	**100**	**1,515**	**100**	**1,346**	**100**

*Total number of allegations cited exceeds the total number of accepted complaints because some complaints dealt with more than one allegation.

Figure 9 - Final decisions by type

	2010	2011	2012
Section 40/41 Analysis *	258	327	433
Dismissed	141	174	190
Settled**	173	244	209
Referred to Tribunal	183	129	113
Total	**755**	**874**	**945**

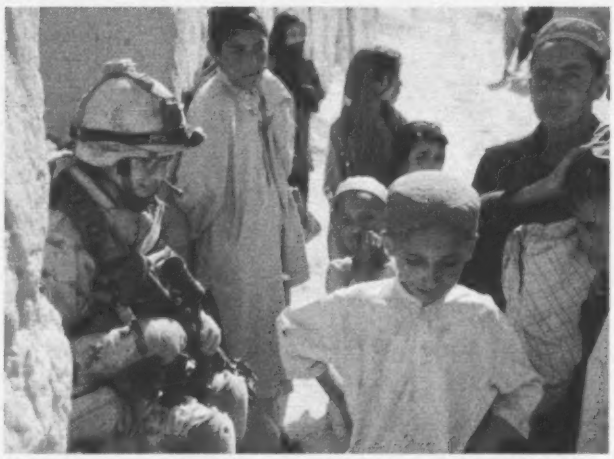
* Under section 40/41 of the Act, the Commission may decide not to deal with a complaint because the complainant ought to pursue another redress mechanism, the incident occurred too long ago, or because the complaint is out of jurisdiction, or considered trivial, frivolous or vexatious.

**Total number of settlements includes all settlements reached between parties, with or without help from the Commission. The number of settlements for 2010 has been adjusted.

Decisions in 2012

A systemic discrimination case about disability

Bronwyn Cruden was working for the Canadian International Development Agency (CIDA) in Afghanistan when she was airlifted home following a medical incident related to type 1 diabetes.



SERGEANT MATTHEW MCGREGOR, CANADIAN FORCES COMBAT CAMERA, © 2011 DND-MDN CANADA

She later applied to return to Afghanistan. While both her doctor and a doctor retained by Health Canada found her to be medically fit, CIDA refused Ms. Cruden's application, citing Health Canada's *Afghanistan Guidelines*. At the time, the guidelines stated that a person is not suitable for posting in Afghanistan when they have a medical condition that can be life-threatening without regular medication.

Ms. Cruden filed a complaint with the Canadian Human Rights Commission, alleging CIDA had discriminated against her based on her disability. She also alleged that Health Canada's *Afghanistan Guidelines* were discriminatory.

The Commission referred the case to the Canadian Human Rights Tribunal, participated in the hearing by representing the public interest, and proposed systemic remedies.

The Tribunal found both CIDA's and Health Canada's practices to be discriminatory. It ruled that while posting Ms. Cruden to Afghanistan would have caused undue hardship, CIDA had not sufficiently attempted to accommodate her needs. The Tribunal also ruled that the wording and application of the *Afghanistan Guidelines* were discriminatory.

The Tribunal ordered CIDA and Health Canada to implement systemic remedies, including changes to how the medical suitability of an employee for an overseas posting is assessed, and rewording of the *Afghanistan Guidelines*.

The Tribunal awarded compensation to Ms. Cruden for pain and suffering and lost income, and ordered CIDA to post her to a country with appropriate medical facilities and no medical restrictions. The Attorney General of Canada has applied for judicial review of the decision.

A landmark settlement for equal pay for equal work

In 2012, the complainants in *Walden et al v. Canada* were awarded $150-million in lost wages.

The settlement was the final decision in a pay equity case that successfully used the *Canadian Human Rights Act* to achieve major systemic change for women in Canada.

The union that represented Ms. Walden and the other complainants took out this ad in newspapers across Canada to mark their victory after many years of litigation.

COURTESY: THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Hate speech provisions to be removed from *Canadian Human Rights Act*

The provisions in Canada's human rights laws that prohibit hate speech have fueled a long-running debate over whether Canada should place limits on freedom of expression.

In 2007, a complaint from the Canadian Islamic Congress against *Maclean's* magazine rekindled public interest in the debate. Though the complaint was dismissed by the Commission, critics of the law argued that the process of examining complaints is punitive and puts a chill on free speech.

In 2011, Brian Storseth, MP tabled a Private Member's Bill to strike the hate speech provisions from the *Canadian Human Rights Act*. The House passed the Bill in 2012 and sent it on to the Senate where it was being debated at time of writing.

C-304

C-304

HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

BILL C-304

PROJET DE LOI C-304

AS PASSED

ADOPTÉ

Aboriginal Issues

First Nations turn to *Canadian Human Rights Act* as agent of change

The context

Many Canadians were never aware that the 1977 *Canadian Human Rights Act* excluded matters under the *Indian Act*—a law that governs life on reserves for some 700,000 Aboriginal people living in more than 600 communities.

This exclusion was meant to be temporary, but it was not corrected until 2008, when Parliament amended the *Canadian Human Rights Act* to extend full human rights protections to First Nations people. Everyone else in Canada had had these protections since 1977.

Amending the *Canadian Human Rights Act* to include the *Indian Act* was one of a number of measures, including the Prime Minister's Residential schools apology, designed to address inequities and a legacy of neglect and discriminatory policies.

The change was intended to promote equality as well as improve accountability. It increases the federal government's accountability in decisions affecting First Nations. And it puts an onus on First Nations governments to be more accountable to the people they serve.

The change was applicable to the Government of Canada on June 18, 2008. It became applicable to First Nations governments on June 18, 2011.

As the surge in new Aboriginal complaints shows, Aboriginal people have embraced the *Canadian Human Rights Act* as a tool to ensure equality and improve accountability and governance in their communities.

The impact

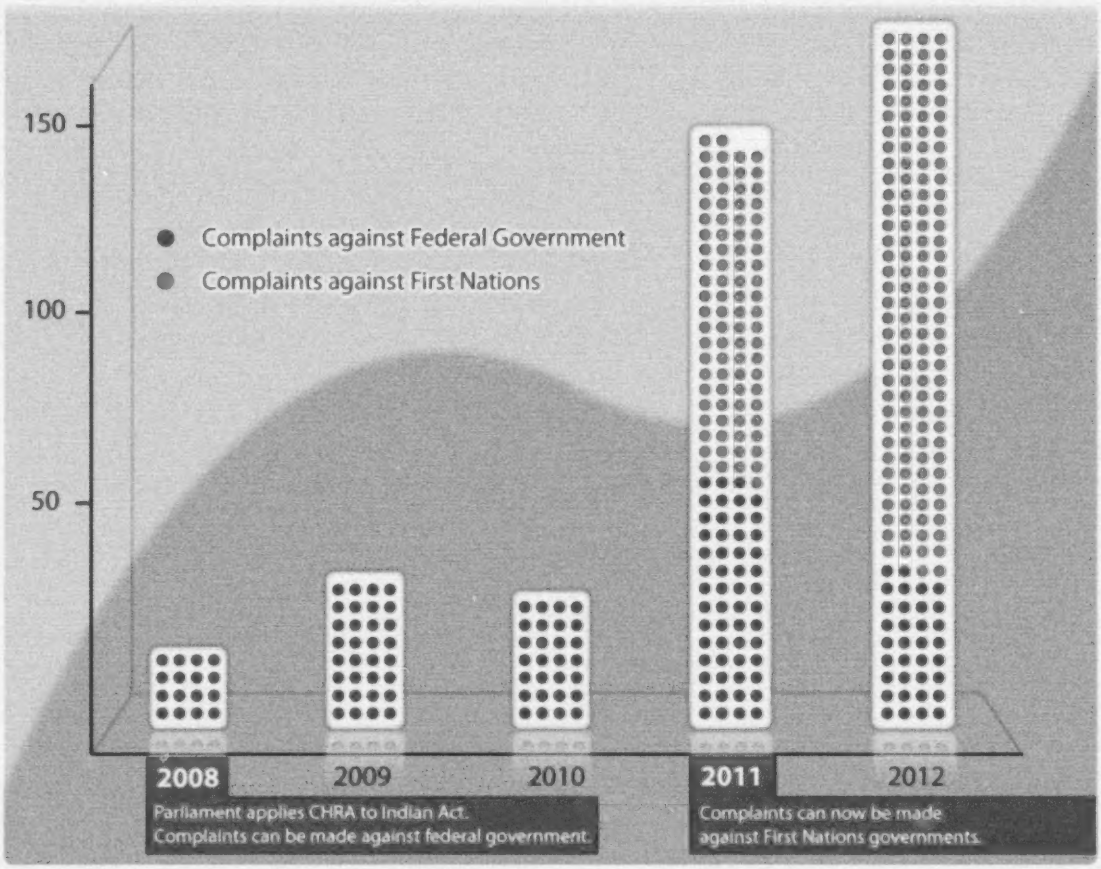
Since the change took effect, Aboriginal people and First Nations groups have filed 390 complaints with the Commission.

225 complaints were against First Nations governments and involve issues such as housing on reserves and eligibility to vote in Band council elections.

165 complaints have been filed against the federal government. Many of them allege that federal funding for services delivered on reserves is inequitable and discriminatory when compared to provincial and territorial funding for the same services off reserve. These services include things such as education, policing and child welfare.

Some complaints could be precedent-setting. Some have the potential to have an impact on formulas used by the Government of Canada to fund services in First Nations communities.

Between 2008 and 2012, the Commission saw a dramatic increase in the number of complaints from Aboriginal people and First Nations groups

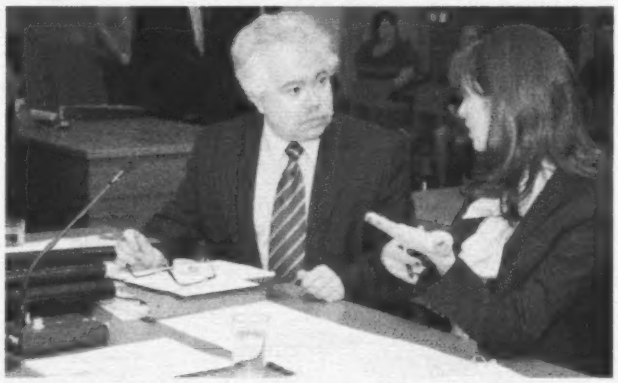


A critical test

A case before the Canadian Human Rights Tribunal in early 2013 will be a major test of the extent to which Aboriginal people living on reserves can use the *Canadian Human Rights Act* to bring about real, tangible change in their communities.

After years of legal back-and-forth, the Tribunal has scheduled 14 weeks of hearings. This will be the first time the case will be heard on the merits.

The issues at the heart of this case will finally be addressed. Can Aboriginal people use the *Canadian Human Rights Act* not just to hold their own governments accountable, but also to hold the federal government accountable, as Parliament intended?



Daniel Poulin, Senior Counsel and Samar Musallam, Counsel, at the Canadian Human Rights Tribunal, September 25, 2012. FRANK BEAULÉ /CANADIAN HUMAN RIGHTS COMMISSION

This case stems from a complaint filed against the Government of Canada by the First Nations Child and Family Caring Society and the Assembly of First Nations.

The complainants allege that federal funding for child welfare services on reserve is inadequate, and in comparison to funding for similar services provided by provinces and territories, amounts to discrimination against First Nations children and families in violation of the *Canadian Human Rights Act*.

The Attorney General of Canada is expected to argue that funding for services on reserve is not within the scope of the *Canadian Human Rights Act*.

If the Attorney General of Canada is successful, all funding for services that the Government of Canada provides could fall outside the jurisdiction of the *Canadian Human Rights Act*.

It is the Commission's position that a finding in favour of the Attorney General's argument would undermine Canada's human rights legislation, adversely impacting all Canadians, and First Nations people in particular.

Cindy Blackstock, Executive Director of the First Nations Child and Family Caring Society of Canada, Canadian Human Rights Tribunal, September 25, 2012. FRANK BEAULÉ /CANADIAN HUMAN RIGHTS COMMISSION

The Commission believes that limiting the jurisdiction and scope of the *Canadian Human Rights Act* would nullify Parliament's intent when it amended the Act in 2008.

In the news

More relevant than ever

As published in the National Post*, June 19, 2012*

Canadians can trust Parliament to ensure the *Canadian Human Rights Act* remains relevant in today's society. The proof is that MPs have voted to amend the Act many times.

MPs voted this month to strike down the section of the Act that prohibited hate speech. Parliament had actually expanded that section to include hate on the Internet 11 years ago, in the very different climate following 9/11.

While hailed as a victory for free speech, this latest change will actually not have all that much impact on the administration of the *Canadian Human Rights Act*. Here's why: Of the 1,914 human rights complaints under the federal Act in 2011, only one complaint regarding hate on the Internet was given consideration. The overwhelming majority of complaints deal with allegations of discrimination on the grounds of disability or age.

Filing a human rights complaint is a last resort for people who believe they have suffered discrimination. Stories of sexual harassment or job loss due to depression illustrate chronic and enduring realities of the modern workplace. Our law protects our right as Canadians to enjoy equality of opportunity and freedom from discrimination.

Recognizing this important purpose, Parliament broadened the scope of the *Canadian Human Rights Act* in 2008, voting to give over 700,000 aboriginal people, mostly residents of First Nations communities, the same protections as everyone else in Canada.

I believe this change was consistent with the government's new approach to working with Canada's First Nations. It quietly became law on June 18, 2008, exactly a week after Prime Minister Stephen Harper's historic apology to former students of Indian residential schools.

Thanks to this change, for the first time in over 30 years, people living on reserves can avail themselves of the protections of federal human rights law when they are victims of discrimination, whether as a result of the actions and decisions of the federal government or their own First Nations governments.

Aboriginal people and First Nations groups have welcomed this new access to justice. They have filed over 300 complaints against the federal government and their own governments since the law took effect. They are determined to use the Act as a tool to end discrimination and improve their quality of life, just as other Canadians have done over more than three decades. Today, more than 10% of the human rights complaints received by the Canadian Human Rights Commission are from aboriginal people. Such a surge is reasonable to expect, after decades of neglect.

Complaints against First Nations governments have to do with things like on-reserve housing or eligibility to vote in Band Council elections. Complaints against the federal government often deal with the provision of services. Several of these allege that federal funding for on-reserve services is inequitable when compared to provincial and territorial funding for the same services off reserve.

A key test case on this issue involves a complaint from the First Nations Child and Family Caring Society and the Assembly of First Nations, in which it is alleged that disparities in funding for child welfare services on reserves constitute racial discrimination.

The Attorney General has argued that federal funding of services on reserves is outside the jurisdiction of the *Canadian Human Rights Act*, and has challenged this complaint in court. If that challenge succeeds, it may set a precedent that could give the federal government sweeping immunity.

Regardless of the outcome, it is certain that Parliament's decision to expand the *Canadian Human Rights Act* to include people governed by the *Indian Act*, principally First Nations residents, will have a greater impact than any other recent amendment.

It gives some of the most vulnerable members of our society the right to challenge systemic and often unconscious prejudices. It reinforces a vision of Canada where everyone has equal opportunity. Sadly, Canada is still not free from the shackles of bigotry.

Extending human rights protections to First Nations people furthers this government's commitment to strengthen access to justice and the onus on First Nations governments to be accountable to the people they serve. These objectives, a constant of recent electoral platforms, are echoed in the Speech from the Throne, and are brought to life in the government's legislative agenda.

I am privileged to play a part in the implementation of a major change to Canadian society, and to help ensure the *Canadian Human Rights Act* remains a cornerstone of our democracy.

David Langtry is Acting Chief Commissioner of the Canadian Human Rights Commission.

Human Rights Act can finally live up to its name

As published in the Vancouver Sun*, September 27, 2012*

Given the toxic stew of brutality and intolerance that envelops so much of the world, Canadians are right to feel a deep sense of privilege. We should be thankful not just for good institutions and laws, but for the force of our collective aspiration to build a society in one small corner of the planet where equality, fairness and freedom from discrimination at least have a chance to flourish.

In passing the *Canadian Human Rights Act* in 1977, Parliament intended to make a difference in people's lives. For the most part, the law has lived up to its promise. Canadians filing discrimination complaints under federal human rights law have brought about changes that help make equality tangible in everyday life. Closed captioning on TV, accessibility of ATM machines, the role of women in the military, and the principle of equal pay for work of equal value are all examples of change born from discrimination complaints.

Yet with just 21 words, the 1977 *Canadian Human Rights Act* excluded the *Indian Act*, leaving hundreds of thousands of aboriginal people, primarily residents of First Nations, in the cold. In other words, the law that outlawed discrimination was itself discriminatory. For more than 30 years, First Nations residents did not enjoy the same protections as other Canadians and could not hold their leadership or the federal government accountable for many of the actions and decisions affecting their daily lives.

This government brought in a bill to correct this anomaly in 2008. Parliament decided then to make the change applicable to the federal government immediately, but gave First Nations governments until 2011 to prepare for their new responsibilities and accountability. Since they obtained these rights, aboriginal people and First Nations organizations have filed more than 300 discrimination complaints. Some of these are complaints against the federal government concerning alleged disparities in federal funding for on-reserve services. However, the bulk of them are against First Nations governments.

The sheer volume of complaints validates Parliament's conviction that the *Canadian Human Rights Act* would be useful for improving accountability and governance. It has only been a year since complaints of discrimination for matters under the *Indian Act* could be made against First Nations governments, and the Canadian Human Rights Commission has already received close to 200 of them. Aboriginal complaints have rapidly become a large part of the Commission's work, just over 12 per cent of our caseload.

Filing a human rights complaint often takes courage, especially in small communities or tightly knit organizations. People often fear ostracism or other forms of retaliation for challenging the status quo. In spite of this, First Nations people have come forward. Their complaints involve allegations that they were barred from educational support, health care, housing or other services because of their race, sex or family status. Others have complained they have been denied jobs because of their race or sex. Still others claim they were prevented from voting or running in an election because of the race or family relationships of their spouse.

These complaints are not reflective of life in all First Nations communities. Nor are aboriginal people the only ones to be dealing with the impacts of discrimination in Canada today. Sadly, despite Canada's enviable reputation for respecting human rights, headlines about allegations of sexual harassment, racial discrimination or other forms of abuse continue to be almost a daily occurrence. Human rights law does not guarantee freedom from discrimination for anyone. What it does guarantee is your right to hold people in power accountable for their actions.

We are just beginning the process of remediating the unjust exclusion of people living under the *Indian Act* from federal human rights law. Aboriginal complaints are more resource intensive, as many touch on a new area of law. New issues, such as the need to take aboriginal customs and laws into account provided they are consistent with the principle of gender equality, are part of the challenge.

I firmly believe, however, that most First Nations governments support this change. In all of my meetings with First Nations leaders, I have only seen a willingness to improve accountability and governance. And so I am optimistic as we continue our journey that the *Canadian Human Rights Act* will deliver to communities previously excluded from it the same benefits as it has brought to mainstream Canadian society, in which freedom from discrimination may not always be a reality, but is always your right.

David Langtry is the Acting Chief Commissioner of the Canadian Human Rights Commission.

Disability Issues

Changing how we see mental illness

The Commission receives more complaints based on the ground of disability than any other.

Within the category of disability, complaints related to mental health are rising fastest.

Last year, almost one in five of all the complaints received by the Commission had to do with mental health. This is not surprising given statistics showing that one person in five in Canada will likely experience a mental illness at some point in their lives.

Jessie Close with her sister and keynote speaker, actress Glenn Close, Together Against Stigma Conference 2012. COURTESY: MENTAL HEALTH COMMISSION OF CANADA

The stigma surrounding mental illness is in itself an obstacle to acceptance, to treatment, and to the accommodation in society of persons affected by it. Stigma triggers strong feelings that can result in acts of discrimination, exacerbating the adverse impact of the illness itself. Stigma encourages people with mental illness to keep their problem secret, discouraging access to treatment. And it makes it harder for people to begin living their lives fully after recovery.

Given the importance of stigma in dealing with mental health issues, the Commission participated, in partnership with the Mental Health Commission of Canada and the World Psychiatric Association, in a major conference devoted to the consideration of stigma.

The Honourable Lisa Raitt, Federal Minister of Labour, Together Against Stigma Conference 2012. COURTESY: MENTAL HEALTH COMMISSION OF CANADA

"Together Against Stigma" brought together nearly 600 of the world's top researchers, mental health professionals, policy makers and people with lived experience to discuss ways of eliminating the discrimination and stigma faced by people with mental illness.

The event featured several high-profile speakers, including former CTV News anchor Lloyd Robertson, Federal Minister of Labour the Honourable Lisa Raitt, and award-winning actress and mental health advocate Glenn Close.

From left to right: Eric Mathews, Advocacy Associate at Disability Rights International; Celia Brown, Chair of Mind Freedom International; and David Langtry, Acting Chief Commissioner of Canadian Human Rights Commission, Together Against Stigma Conference 2012. COURTESY: MENTAL HEALTH COMMISSION OF CANADA

In the closing plenary session hosted by the Canadian Human Rights Commission, panelists discussed ways that human rights legislation and policy can be used to advance this objective.

"Complaints regarding mental health continue to increase. That shows me that stigma and discrimination are all too prevalent," Acting Chief Commissioner David Langtry told the conference. "I do share the hope that there is a paradigm shift ... and that people with mental illnesses are treated as rights holders."

Mental health and Canada's prisons

Some of the mental health-related complaints that the Commission receives come from inmates in the federal correctional system. Often, the complainants have serious mental illness.

Renee Acoby alleges that the Correctional Service of Canada discriminated against her for a variety of reasons, including her mental illness. LEAH HENNEL/CALGARY HERALD

The Office of the Correctional Investigator crystallized the issue in his 2009-2010 Annual Report. "As a society," he wrote, "we are criminalizing, incarcerating and warehousing the mentally disordered in large and alarming numbers. The needs of mentally ill people are unfortunately not always being met in the community health and social welfare systems. As a result, the mentally ill are increasingly becoming deeply entangled in the criminal justice system."

The Office of the Correctional Investigator has observed that Canada's federal correctional system is ill-equipped to provide support and treatment to people with mental illness. This lack of support can contribute to a vicious downward spiral for some inmates.

In many cases, people with mental illness have been placed in solitary confinement, sometimes for prolonged periods of time. This practice raises concerns because studies suggest that solitary confinement can have harmful and permanent psychological and physical effects, particularly when someone has pre-existing mental disabilities.

In many cases, people with mental illness have been placed in solitary confinement, sometimes for prolonged periods of time. LEAH HENNEL/POSTMEDIA

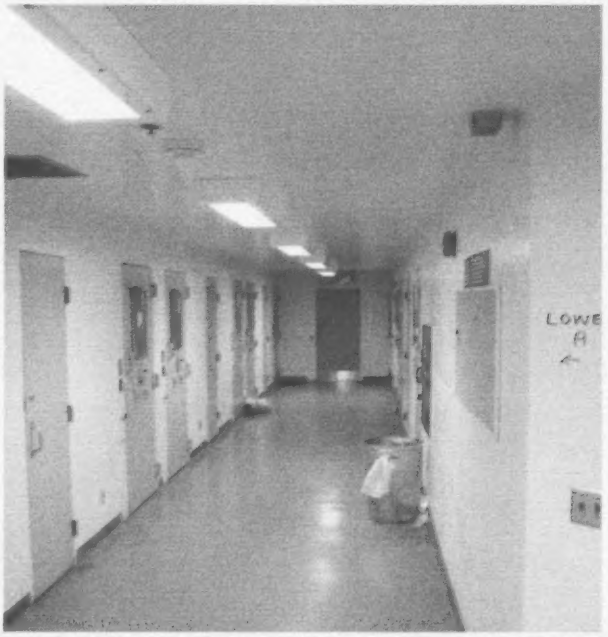
In 2012, the Commission sent a complaint from Renee Acoby, a federal inmate who has spent over a decade in and out of solitary confinement, to the Canadian Human Rights Tribunal.

Ms. Acoby is an Aboriginal woman who was born into a world of violence, abuse and neglect. When she was only six months old, her father murdered her mother, leaving Ms. Acoby to be raised by her grandmother. Upon learning this history as a preteen, Ms. Acoby became angry and defiant.

She was removed from her grandmother's home a number of times by the Children's Aid Society, and bounced around between foster care and group homes.

In 2000, at age 20, Ms. Acoby was sentenced to three and a half years in the Saskatchewan Penitentiary for drug trafficking and assault with a weapon.

Once in prison, her downward spiral began in earnest. Ms. Acoby committed additional crimes, extending her sentence by 18 years.



Studies suggest that solitary confinement can have harmful and permanent psychological and physical effects, particularly when someone has pre-existing disabilities. COURTESY: OCI

In 2011, she was declared a dangerous offender, a designation more commonly applied to male offenders who have committed murders, sex offences, and other serious violent crimes outside prison.

Ms. Acoby became a dangerous offender as a result of her behaviour in prison. Her sentence is now indefinite.

Ms. Acoby's complaint alleges discrimination by the Correctional Service of Canada on the grounds of sex, national or ethnic origin, disability (specifically mental illness), and religion in relation to her First Nations spirituality. She alleges that her treatment in prison, including years in solitary confinement, contributed to poor mental health, poor choices, and criminal conduct while in jail.

The Canadian Human Rights Tribunal is expected to hear the case in 2013. The Canadian Human Rights Commission will represent the public interest at the hearing.

Gaps in equality of opportunity for people with disabilities

In 2012, the Commission released the *Report on Equality Rights of People with Disabilities*. The report was the first comprehensive examination of how disability affects equality of opportunity in daily life. It provides a benchmark that will enable Canadians to track progress and identify barriers that affect people with disabilities.

The report shows that people with disabilities often do not have the same opportunities as others in areas such as education, employment and economic well-being.

For example, when compared to other adults, adults with disabilities:

- are half as likely to complete a university degree,
- are more likely to settle for part-time instead of full-time employment, and
- have lower annual incomes.

The report looked at seven elements of daily life: education, employment, economic well-being, housing, health, justice and safety, political engagement and social inclusion.

Gender Issues

No to harassment: Organizations must be proactive

The media often reports allegations of sexual harassment in the workplace. This behaviour generally takes the form of inappropriate comments, unwanted touching and uninvited sexual overtures. Where it involves the unequal treatment of a man or woman because of gender, harassment constitutes a form of discrimination prohibited by law.

In October 2012, the House of Commons Standing Committee on the Status of Women invited the Commission to present its observations and views on sexual harassment in workplaces under federal jurisdiction.

ORDERS OF THE DAY
ORDRE DU JOUR
SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE
LE HARCÈLEMENT SEXUEL DANS LES MILIEUX DE TRAVAIL FÉDÉRAUX

"An equitable distribution of power within the workplace helps foster the inclusion of women and a workplace culture of respect." Acting Chief Commissioner David Langtry, House of Commons Standing Committee on the Status of Women, October 16, 2012. COURTESY: SPEAKER OF THE HOUSE OF COMMONS

Acting Chief Commissioner David Langtry confirmed the persistence of the problem. During his appearance he reported that the Commission had received 332 complaints of sexual harassment since January 1, 2007. Of these sexual harassment complaints, 86% were reported by women. Since then, the Commission has received an additional 13 complaints dealing with sexual harassment in the workplace.

These numbers do not tell the whole story. A large number of complaints are addressed within organizations and do not necessarily reach the Commission. We can also assume that many cases are simply not reported. "Filing a complaint takes courage," Mr. Langtry said.

Employers must recognize that laws and policies are not enough to address the problem, Mr. Langtry emphasized. Laws confirm the right to work without harassment, but they do not prevent it.

To prevent sexual harassment, organizations must do a better job of promoting the importance of respect and human rights. According to Mr. Langtry, there must also be "equitable representation of women in positions of responsibility." The Commission has noted that sexual harassment occurs most often in organizations in which the upper echelons are dominated by men.

Ending sexual harassment requires a fundamental culture shift within organizations, Mr. Langtry concluded.

Breaking down barriers to gender equality

Gender Integration Framework

Although it is widely accepted throughout Canadian society that that men and women are equal, new policies, programs or initiatives still have the potential to be discriminatory.

The Federal Departmental Action Plan on Gender-Based Analysis, led by Status of Women Canada, challenges organizations and policy developers to take a closer look at whether a new program or policy will have a negative impact on a person, because of their gender.

As part of its effort to implement the Action Plan, the Commission developed the Gender Integration Framework. This framework enables the Commission to identify barriers to gender equality when it is developing policies or measures.

The Commission hopes that other organizations and policy developers will use the Gender Integration Framework as a tool to help improve their own policies or measures. The Framework is already attracting broad interest from national and international organizations, including the United Nations Human Rights Council.

"The Canadian Human Rights Commission's *Gender Integration Framework* is an invaluable tool for organizations looking to implement the *Federal Departmental Action Plan on Gender-Based Analysis* that is being led by Status of Women Canada."

Suzanne Clément, Coordinator - Status of Women Canada

Gender identity and gender expression

In November 2012, a private member's bill introduced by Esquimalt-Juan de Fuca MP Randall Garrison went before the House of Commons Standing Committee on Justice and Human Rights. Bill C-279 proposes to amend the *Canadian Human Rights Act* to include gender identity and gender expression as two new grounds of discrimination.

On November 27, 2012, the Commission's Acting Secretary General, Ian Fine, appeared before the Standing Committee.

Excerpts from Mr. Fine's speech:

"It is difficult to know how many transgender people there are in Canada. What we do know is that many transgender individuals are reluctant to identify themselves or seek assistance.

Often, they fear being shunned by society. Or they fear being harassed or treated unfairly. Or they may fear for their safety. Even accessing healthcare or obtaining identification documents can be difficult. Some feel that doing so threatens their privacy, and in turn, their security.

In a country where we take pride in being diverse and inclusive, nobody should have to live in fear because of who they are.

Parliament designed the *Canadian Human Rights Act* to promote equality and acceptance. It was created to protect all of us, including vulnerable members of our society, from harassment and discrimination.

If someone experiences discrimination based on gender identity or gender expression they are currently protected under the *Canadian Human Rights Act*. In the past five years, the Commission has received 19 discrimination complaints that raise transgender issues. Eight of these cases are still open.

We at the Commission believe that the complaints that come forward do not provide a full picture of discrimination involving gender identity or gender expression. For many, filing a complaint is a last resort. It takes courage. The fear of stigma can be overwhelming for some. It's often easier to remain silent.

In the past, Parliament has amended the *Canadian Human Rights Act* to ensure that the most vulnerable members of our society are protected from harassment and discrimination. Adding the ground of sexual orientation is one example. Adding the grounds of gender identity and gender expression to the Act would make protection for members of the transgender community explicit.

This would promote acceptance and send a message that everyone in Canada has the right to be treated with equality, dignity and respect."

Corporate responsibility for human rights

Release of *Human Rights Maturity Model*

In February 2012, the Commission released the Human Rights Maturity Model, a roadmap for building better, healthier workplaces. By the end of 2012, 45 Canadian organizations, employing some 375,000 employees across Canada in both the public and private sectors, had signed up to use the Model. The Commission is also leveraging its role as Chair of the International Working Group on Business and Human Rights to promote the Human Rights Maturity Model with international partners.

HR Reporter

New tool promotes human rights at work

Leadership support, communication, consultation among key elements identified by federal human rights commission to encourage respect, equality in workplace

"We usually refer to it as a road map to building a better workplace," he said. "We try to encourage employers to understand this is aspirational, it's about trying to make your workplace better, not just taking a snapshot and walking away from it and hoping that it gets better." - Piero Narducci

In June 2012, *Canadian HR Reporter* promoted the HRMM in a journal article. The article included an interview with Piero Narducci of the Discrimination Prevention Branch.

The Model provides organizations with a framework to create and sustain healthy and productive workplaces. It encourages organizations to be proactive and help prevent discrimination by having policies and processes that consider people's individual needs.

The Model can be made to fit any organization, at any stage in its life-cycle. Some of the organizations registered with the Model have fewer than 500 employees while others have as many as 50,000. Some are transportation companies. Others are in the banking or telecommunications sector. The Model can be adapted to suit the unique needs of every organization and industry.

There are many organizations that have not signed up to use the Model but are applying its methods and principles. Organizations can use the Model on their own to assess how well they are upholding human rights, what improvements they can make, and how to implement them.

"The Human Rights Maturity Model is a fantastic tool that provides a quantitative measure of just how well human rights, including Employment Equity and Diversity factors, are being implemented within an organization. We were surprised to find areas for improvement that we weren't even aware of until we completed the self-evaluation. We can't wait to measure our progress and see how much we have moved along the Maturity Model. We will be using this tool for many years to come!"

- Shelley Adams, Manager of Employment Equity and Diversity, Public Works and Government Services Canada

"The Human Rights Maturity Model is helping us build a culture of human rights where our commitment to equality and respect influences every decision—from hiring and advancement, to serving customers in a respectful manner. It's in everything we do."

- Joy Serne, Senior Director, Farm Credit Canada

Chairing the ICC Working Group on Business and Human Rights

In 2012, the Commission continued its role as Chair of the ICC Working Group on Business and Human Rights.

The Working Group was created in 2009, and operates under the guidance of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).

Under the Commission's leadership, the Working Group is influencing international human rights standards and engaging proactively and constructively on emerging human rights issues. The Working Group was instrumental in advancing the new human rights chapter in the revised OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights upon which the Guidelines are based, as well as the associated Memorandum of Understanding between the ICC and OECD signed November 2012.

The Commission's two-year term as Chair of the Working Group will end in August 2013.

Workplace Accommodation

Speaking the same language

Identifying and accommodating the needs of an employee returning to work after an injury or illness can be difficult. Often, many people need to be involved. Without a common process or common language in place, confusion over vocabularies and perspectives can often overshadow the needs of the employee. This theme presents itself in many of the complaints the Commission receives related to disability.

The Commission is developing a tool that will offer employers a standardized workplace accommodation process. It is being developed with guidance from various government departments, private sector companies and healthcare providers. The new process will offer employers a common language and common set of guidelines that will make it easier for people to accommodate someone's return to work.

Mental illness and human rights in the workplace

The Commission participated, in partnership with the Mental Health Commission of Canada and other key organizations, in the 5th annual International Stigma Conference titled *Together Against Stigma: Changing how we see Mental Illness* in June 2012.

Breakout session at the Together Against Stigma Conference 2012 COURTESY: MENTAL HEALTH COMMISSION OF CANADA

The three-day conference was an historic event that gathered nearly 600 of the world's top researchers, mental health professionals, policy makers and people with lived experience.

Acting Chief Commissioner David Langtry led a panel discussion on mental health as a human rights issue. He stressed the importance of systemic change when it comes to the treatment of people with mental illness, particularly those living in the prison system. Harvey Goldberg, Team Leader of Strategic Initiatives moderated a workshop on how *The UN Convention on the Rights of Persons with Disabilities* can be a useful tool to protect the rights of people with mental disorders. A panel on the duty to accommodate was moderated by Monette Maillet, Director General of the Knowledge Centre.

Each panel consisted of an open dialogue between academic experts on human rights and disability, representatives from human rights commissions, and representatives from disabled persons organizations.

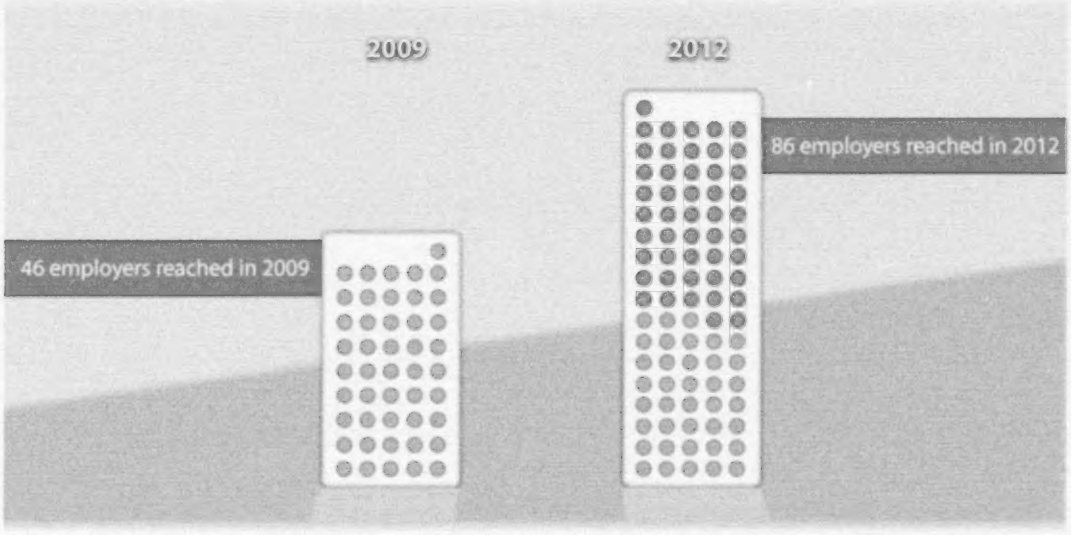
Employment Equity

Reaching more employers

In 2012, the Commission entered its second year of the simplified employment equity audit process.

The Commission no longer requires employers that have demonstrated success in meeting their employment equity objectives to participate in a full audit. This means that the Commission is able to focus on employers that need guidance in improving equal employment opportunity for women, Aboriginal peoples, persons with disabilities, and members of visible minorities (in other words, the four designated groups in the *Employment Equity Act*). In addition, the Commission can follow-up with these organizations sooner after an audit than previously.

The result is that in just two years, the Commission has almost doubled the number of employers it provides guidance to on how to achieve better workplace representation for the four designated groups (see chart below). By reaching a greater number of organizations, the Commission is broadening its influence and gaining a better understanding of how to best serve employers who face difficulty in eliminating barriers to employment for the designated groups.



Promoting the business case for diversity

There is growing recognition of the importance of diversity in the workforce across both the public and private sectors. Canada's top diversity employers are being hailed in national media. And more and more stories in Canadian newspapers, magazines and online publications are promoting the idea that diversity and prosperity go hand in hand.

The Commission welcomed the federal government's creation, in July 2012, of the Panel on Labour Market Opportunities for Persons with Disabilities. The panel is composed of a cross section of senior corporate leaders and disability rights advocates who help identify barriers to employment for people with disabilities in the private sector. The panel was created to promote the business case for diversity by shining light on best practices and successes among Canadian employers in the private sector, including federally regulated employers.

The panel's work is published in a report entitled *Rethinking disAbility in the Private Sector.*